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No. 82-2067

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

ROBERT GALANTY,

Petitioner,

vs.

CHRYSLER CORPORATION and
ROSSMEYER BROTHERS, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF NEW JERSEY

BRIEF ON BEHALF OF RESPONDENT, CHRYSLER CORPORATION IN OPPOSITION TO THE PETITION FOR CERTIORARI

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CHRYSLER CORPORATION owns a 15% interest in Peugot, S.A.; a 15% interest in Mitsubishi Motors Corp.; and, a 99.4% interest in Chrysler de Mexico. In addition, Chrysler Corporation owns a controlling interest in numerous dealerships under an investment program to provide initial capital for dealers. For the information of the Court, Chrysler Financial Corporation is a wholly owned subsidiary of Chrysler Corporation. Chrysler Financial Corporation owns and operates Chrysler Credit Corporation which engages in retail and wholesale financing of automobiles.

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COUNTERSTATEMENT OF OPINIONS IN THE COURTS BELOW

On March 7, 1983, the Supreme Court of New Jersey dismissed plaintiff's appeal and determined that certification was "improvidently granted" thirteen days after hearing oral argument of counsel. (PA5).

On March 11, 1982, the Superior Court of New Jersey, Appellate Division, affirmed the trial court in a two sentence per curiam opinion which found the issues of law raised on appeal to be "clearly without merit". (PA2).

On or about August 25, 1980, the trial court, after hearing all of plaintiff's evidence which consisted solely of his own testimony, dismissed plaintiff's case for insufficient proofs. (PA9).

COUNTERSTATEMENT OF JURISDICTION

There is no basis for United States Supreme Court Jurisdiction. The case

involves the sufficiency of proofs adduced at trial. The courts below recognized the applicability of the Magnuson-Moss Act, independent of the Uniform Commercial Code, but found the proofs insufficient to establish a defect in the product or a breach of warranty. Therefore, there is no question involving an interpretation of federal statute in this case.

COUNTERSTATEMENT OF QUESTION PRESENTED

Whether plaintiff adduced sufficient proofs at trial to establish a defect in the subject automobile and a factual basis for breach of warranty.

COUNTERSTATEMENT OF THE CASE

Plaintiff petitions for certiorari from a determination by the trial court, the appellate division of the Superior Court of New Jersey and the Supreme Court

of New Jersey, the highest state court, that his proofs were insufficient to establish a factual basis for his alleged cause of action for breach of warranty. In each instance, the plaintiff had an opportunity to present oral argument before the respective courts and to muster all available proofs which he contended supported his position. In each instance, the dismissal entered by the trial court was sustained and plaintiff's argument dismissed as clearly without merit.

The proofs at trial disclosed that on September 1, 1976, plaintiff purchased a 1976 Plymouth Sport Fury from the co-respondent, Rossmeyer Brothers, Inc. (Rossmeyer). This automobile was manufactured by the respondent, Chrylser Corporation (Chrysler). The purchase price was $5,407.50.

Plaintiff operated this automobile from the date of purchase through August 25,

1980 (the date of trial) and by that time the automobile had been driven over 56,000 miles. While plaintiff complained of various cosmetic problems, upon cross examination he conceded that all problems with the vehicle had been corrected with the exception of his complaints regarding steering and occasional stalling. However, plaintiff's testimony indicated that he had taken the vehicle to various mechanics complaining of the steering problem and in each instance they advised him that the steering was functioning properly and could not verify a problem with this function. As a result, at the conclusion of plaintiff's proofs, there remained solely his complaint of an occasional stalling problem in a vehicle which had been driven 56,000 miles. There was no proofs with respect to the cause of the alleged stalling, the measure of compensatory damages, nor of a defect or any

substantial impairment of the use of the vehicle.

In contrast, the plaintiff acknowledged that Chrysler had offered to permit him to obtain an estimate for all repair work from an independent automobile garage and to have the automobile repaired by the mechanic of his choice at no cost to the plaintiff. However, for reasons which he would not express at trial, the plaintiff declined this offer and instead presented Chrysler with an altered estimate. As of the time this matter was argued before the Supreme Court of New Jersey, on February 22, 1983, there was an indication by plaintiff's counsel that he may still be operating this vehicle.

There was never a holding nor a discussion by any court below involving the applicability of the Magnuson-Moss Warranty Act (15 U.S.C. 2301) nor suggesting that this statute did not afford an

additional remedy separate and distinct from the Uniform Commercial Code as suggested in plaintiff's statement of the question presented. New Jersey clearly recognizes the separate relief afforded by the Act and the instant case involves solely an issue of the sufficiency of plaintiff's proofs to support his alleged breach of warranty. Even the sole dissenting Justice of the New Jersey Supreme Court based his very brief dissent on his view of the sufficiency of the evidence adduced at trial to prove a breach of warranty. There was never any question but that the Magnuson-Moss Act created a remedy separate and distinct from the Uniform Commercial Code and this was never an issue in this case.

REASON FOR DENYING CERTIORARI

New Jersey fully recognizes and applies the Magnuson-Moss Warranty Act

consistent with federal law and enforces the causes of action and remedies afforded therein separate and apart from whatever causes of action may exist under the Uniform Commercial Code. Ventura v. Ford Motor Company, 173 N.J. Super 501, 414 A.2d 611 (Ch. Div. 1980), affirmed 180 N.J. Super 45, 433 A2d 801 (App. Div. 1981). Accordingly, the federal question proposed by the plaintiff-appellant does not exist. In order for plaintiff to establish a cause of action under the Magnuson-Moss Act, he must first establish a breach of warranty which he was unable to do as a result of the insufficiency of his proofs in this case.

CONCLUSION

For the foregoing reasons, Respondent Chrysler Corporation respectfully requests and prays that plaintiff's Petition for

a Writ of Certiorari be denied.

Respectfully submitted,

BUMGARDNER, HARDIN & ELLIS

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